IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLN.NO.2702 OF 2005

M.V.Henry,
Intelligence Officer NCB,
Mumbai ..Applicant

Vs.

Aslam Mohammed Shaikh
@ Jamal Bhai
and Anr. ..Respondents

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Mrs.A.S.Pai counsel for applicant
Mr.Ayaz Khan advocate for Respondent No.1
Mr.K.V.Saste A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 9, 2007

P.C.

1. Heard the learned counsel for the applicant-original complainant N.C.B.Mumbai, the learned counsel for the respondent no.1-original accused and the learned A.P.P. for the State.

2. The respondent no.1 was granted bail by order dated 22.3.2005 by the learned Special Judge, Gr.Bombay in N.D.P.S. Special Case No.28 of 2005. Being aggrieved by the order granting bail to the respondent no.1-original accused, this application for cancellation of bail has been preferred.

3. The learned counsel for the N.C.B. Mumbai, has

sought cancellation of bail only on the merits of the case and there are no allegations that there is any breach of any of the conditions imposed on the respondent no.1-original accused.

4. Brief facts of the case are as under:

. Consignment of about 12000 ampoules of Buprenorphine injections was kept in the godown of M/s.Chawla Highway Carriers. It is the prosecution case that the accused was to take the delivery of the said consignment and hence, the accused had come to the godown on 11.1.2005 at about 5.20 p.m. to collect the said consignment. At that time, the officers of the NCB apprehended him and two packets of the said consignment were opened and on opening the cartons, Norphazine Buprenorphine injections were found which is a psychotropic substance under the N.D.P.S.Act. In all 11950 ampoules of Buprenorphine injections came to be seized. Hence, the accused came to be arrested.

5. The learned Special Judge granted bail to the Respondent accused on the ground that the case was not of possession of commercial quantity of drugs.

6. The learned counsel for the respondent no.1-accused has pointed out that according to the prosecution, 11950 ampoules of Buprenorphine injections were found which is below the limit of commercial quantity as commercial quantity would require about 33000 ampoules .

7. The learned counsel for the N.C.B. has submitted that accused used to finance such consignments. However, no details thereof have been furnished.

8. The learned counsel for the N.C.B. has further submitted that besides 11950 injections which were found in the present case, the accused was involved in export of these injections not just in this case but he has also been involved in one other such transaction. As far as this aspect is concerned, reliance is placed on the statement of the accused wherein it is stated that on earlier occasion also injections had been exported. Hence, it is the case of the applicant that the quantity cannot be restricted to the quantity seized in the present case but the quantity in the other transaction

would also have to be taken into consideration.

9. The learned counsel for the N.C.B. has placed reliance on the unreported decision of this Court in Criminal Application No.2728 of 2006 (Ezeigwe Sunday John and others Vs. The Intelligence Officer, N.C.B. wherein it is observed that if the person did not have the requisite licence or permit, then the person has committed offence. She has submitted that based on this ground, bail application of the accused in the aforesaid decision came to be rejected. However, in the aforesaid decision, the quantity of drug involved was commercial quantity, however, in the present case, the quantity is much below the commercial quantity and hence, the said decision would not be applicable to the facts of this case.

10. Admittedly, other than the statement of the accused there is nothing on record to show that the accused had earlier exported a consignment of such Injections. There is no independent material to show that prior to this incident, the Respondent had exported any such consignment. The prosecuting agency in this case i.e. Narcotics Control Bureau

has not collected independent evidence showing that this applicant was also involved in any other transaction of transportation and export of huge quantity of Buprenorphine injections. Moreover, there is no material regarding the date, time when the consignment was sent or to whom it was sent or the number of injections or the weight thereof. It is an admitted fact that commercial quantity of Injections is 33000 injections and the quantity seized in the present case is 11190 injections i.e. much below the commercial quantity.

11. It is well settled that criterion for grant of bail and the criterion for cancellation of bail is entirely different. As stated earlier, there is no allegation of any breach of any of the conditions imposed on the accused nor is it the case of the N.C.B. that the accused had absconded or would not be available for trial in future. Looking to all the facts of this case, it cannot be said that the order of the learned Sessions Judge is illegal or perverse, hence, I do not think that this is a fit case to cancel the bail.

12. Application is rejected.

[Smt.V.K.Tahilramani, J.]